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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter:	CC Docket No. 98-184
GTE CORP.	
Transferor	Public Notice of March 26, 2001 DA 01-764
and	
BELL ATLANTIC CORP.	
Transferee,	
For Consent to Transfer of Control	

COMMENTS OF WORLDNET TELECOMMUNICATIONS, INC.

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April 25, 2001

Before the
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Washington, D.C. 20554

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COMMENTS OF
WORLDNET TELECOMMUNICATIONS, INC.

I. INTRODUCTION

On February 12, 2001, WorldNet Telecommunications, Inc. ("WorldNet") filed at the FCC an *Ex Parte* Letter requesting that the Commission reopen the above referenced docket. On March 26, 2001, this Commission released a public notice establishing a pleading cycle for comments on WorldNet's *Ex Parte* Letter within CC Docket No. 98-141, 98-184 ("Public Notice"). WorldNet hereby submits its comments in response to the Commission's Public Notice.

II. SUMMARY

On June 16, 2000, when the Federal Communications Commission ("FCC") issued its Memorandum Opinion and Order authorizing the Bell Atlantic Corp. ("Bell Atlantic" or "BA") and GTE Corp. ("GTE") corporate merger subject to 25 pro-competition conditions, the telecommunications industry in Puerto Rico was exited and optimistic that competition would soon be a reality.[1] The Puerto Rican Telecom Industry thought that finally there would be some strong measures to help telecommunications competition in Puerto Rico.

The industry's hopes, however, soon turned to frustration and disappointment. Several months after the FCC approval, when competitors asked Puerto Rico Telephone Co., Inc. ("PRTC") when the FCC adopted conditions would be applied to Puerto Rico and PRTC, PRTC responded that the conditions are not applicable to Puerto Rico or PRTC. This realization was another setback for telecom competition in Puerto Rico. PRTC's competitors began questioning the logic of why the FCC Merger Order's conditions would not be applicable to PRTC, a company controlled by GTE, the only ILEC in Puerto Rico and the only LEC that has absolute control of the local telephony market as well as the access service and intra-island long distance service markets in Puerto Rico.

WorldNet, in its *Ex Parte* Letter, requested that the 25 conditions adopted by the Commission in its Merger Order be applied to PRTC, a company controlled by Verizon. These conditions, as explained by the FCC, are designed to open telecommunications competition and provide equitable competition.

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[1] Memorandum Opinion and Order, In re Application of GTE Corporation and Bell Atlantic Corp. for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, FCC 00-221, CC Docket No. 98-184 (June 16, 2000) ("FCC Merger Order" or "Merger Order").

A. Puerto Rico Telephone Company and Its Parent Companies

In September 16, 1998, PRTC and GTE Holdings (Puerto Rico) LLC ("GTE Holdings") jointly filed a Petition for Authorization to Transfer Control ("Petition") at the Puerto Rico Telecommunications Regulatory Board ("Board").[2] The petition requested authorization from the Board to transfer the corporate control of PRTC, the company holding the certification from the Board to operate as a telecommunications service provider in Puerto Rico, from the Puerto Rico Telephone Authority, a government entity, to GTE Holdings.

GTE Holdings is a 100% owned subsidiary of GTE International Telecommunications Incorporated, which is a 100% owned subsidiary of GTE Corp.[3] GTE Holdings owns 40% plus one of the stocks of Telecomunicaciones de Puerto Rico, Inc. ("TELPRI"), which is the parent company of PRTC and Celulares Telefonica, Inc. ("CTI"), the company operating, under the FCC wireless licenses, the PCS and cellular systems in Puerto Rico.

In February 22, 1999, the Board issued a Resolution and Order in which it authorized the transfer of corporate control of PRTC to GTE Holdings and held that Certification No. JRT-CERT-0013 from PRTC would remain in effect.[4] The Board, however, did not impose any conditions on GTE Holdings for the transfer of control. On February 12, 1999, the FCC issued a Memorandum Opinion and Order authorizing the transfer of control of licenses and authorizations from PRTC and CTI to GTE Holdings.[5]

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[2]See Exhibit No. 1.

[3]See Exhibit No.1, at 16-18.

[4]See Exhibit No. 2.

[5]Memorandum Opinion and Order, In re Applications of Puerto Rico Telephone Authority and GTE Holdings for Consent to Transfer Licenses and Authorization Held by Puerto Rico

On August 16, 1999, GTE Corp. ("GTE") and Bell Atlantic Corp. ("Bell Atlantic"), jointly filed at the Board a Petition for Authorization of Corporate Merger Between GTE Corp. and Bell Atlantic Corp. ("Merger Petition").[6] In the Merger Petition, GTE and Bell Atlantic request authorization from the Board for the corporate merger between the two companies. For this Merger Petition, the Board utilized Docket No. JRT-CERT-0013. The Board, however, did not request comments from any of the telecommunications service providers in Puerto Rico or held a hearing on the subject.

On January 31, 2000, the Board issued a Resolution and Order authorizing the corporate merger between GTE and Bell Atlantic ("Resolution").[7] The Board, however, imposed certain conditions for the merger authorization. First, GTE and Bell Atlantic had to present to the Board the quality service standards that would be applicable for their operations in Puerto Rico. These quality standards shall be effective until the Board promulgates a regulation applicable to PRTC. Second, the Resolution provides that after the merger PRTC will continue to comply with all applicable Board rules and regulations. Third, the Resolution further states that PRTC will provide annually to the Board copies of GTE's and Bell Atlantic's 10K Forms filed with the Securities and Exchange Commission ("SEC") and will participate with the Board in an annual state of the company meeting during the first five (5) years following the merger. Additionally, the Resolution provides that the petitioners shall submit a document whereby they accept the term of the Resolution, signed by an officer of GTE and by an Officer of Bell Atlantic. Finally, the Resolution provides that

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Telephone Company and Celulares Telefonica, Inc, FCC 99-22 (Feb. 12, 1999) ("FCC PRTC-GTE Order").

[6]See Exhibit No. 3.

[7]See Exhibit No. 4.

the merger authorization will take effect only when the Federal Communications Commission ("FCC") grants the necessary authorization for the corporate merger between GTE and Bell Atlantic.

On March 13, 2000, GTE and Bell Atlantic filed a document at the Board titled "Acceptance of Terms of Resolution and Order," in which they accepted the terms and conditions imposed by the Board in the Resolution GTE and Bell Atlantic complied with these conditions. On May 3, 2000, PRTC submitted to the Board the Form 10K filed by GTE and Bell Atlantic with the SEC for the fiscal year ended on December 31, 1999. Then, on May 31, 2000, PRTC submitted to the Board the Quality Standards requested in the Resolution.[8]

On the other hand, on June 16, 2000, this Commission released the Memorandum Opinion and Order authorizing the corporate merger between GTE and Bell Atlantic.[9]

B. WorldNet Telecommunications, Inc. and the Telecommunications Competition in Puerto Rico.

WorldNet is one of the few resellers operating in Puerto Rico. WorldNet is a small company with operations only in Puerto Rico and no affiliations to any other company. WorldNet is a product of the Federal Telecommunications Act, 47 U.S.C. §§ 251 *et seq.* and the Puerto Rico Telecommunications Act, Act 213 of September 12, 1996, 27 L.P.R.A. §§ 265 *et seq.* On February 22, 1999, it signed a Resale Agreement with PRTC. WorldNet now plans to move to the second stage of telecommunications competition and become a Competitive Local Exchange Carrier ("CLEC"). As a CLEC, WorldNet must sign an interconnection agreement with PRTC and lease either individual Unbundled Network Elements ("UNE") or utilize a UNE-Platform ("UNE-P").

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[8]See Exhibit No. 5.

[9]See FCC Merger Order.

WorldNet, however, understands that the currently available interconnection agreements from PRTC are well behind, regarding competitive terms and conditions offered, the ones offered by the affiliates and/or subsidiaries of Verizon, Bell Atlantic Corp. and/or GTE Corp. in the United States mainland ("Interconnection Agreements within Verizon Territory"). In order to achieve the level of competitiveness reached in the interconnection agreements available in the Verizon territory, WorldNet would almost assuredly have to undergo a costly arbitration proceeding, with possible appeals. WorldNet's experience is discussed further in Section 5 below. Additionally, even after finalizing the appeals process there would be no guarantees that the agreement would contain the desired terms and conditions currently available in the Interconnection Agreements within Verizon Territory.

Actually, in Puerto Rico lengthy and contentious negotiations and arbitration proceedings are usually required by PRTC and the effect has been to drive competition off Puerto Rico. In May 22, 1997, KMC, after hard negotiations and an arbitration, signed an interconnection agreement to start operations as a CLEC in Puerto Rico. KMC, however has not started any operations in Puerto Rico, yet operates in many U.S. markets.

In September 8 1998, Corecomm Puerto Rico, Inc. ("Cellular One") signed an interconnection agreement with PRTC in order to operate as a CLEC in Puerto Rico. After a try as a CLEC in Puerto Rico, Cellular One has recently decided to close shop on its CLEC operations.

In October 13, 1999, after negotiations and a lengthy arbitration proceeding, Sprint Communications Company, L.P. ("Sprint CLEC"), signed an interconnection agreement to start operations as a CLEC in Puerto Rico. Sprint CLEC has never been heard off. It has decided not to operate in Puerto Rico as of yet.

On December 1999, RSV Telecom Inc.("RSV") requested an interconnection agreement with PRTC to operate as a CLEC and/or DLEC in Puerto Rico. On March 2001, after a lengthy and highly litigated arbitration proceeding and reconsideration motions, RSV received a final interconnection agreement from the Board. RSV, however, as of today, has not started operations in Puerto Rico.

All of the above are loopholes available in the law that PRTC has utilized to eliminate competition. First, PRTC forces barriers to entry through the roof by orchestrating costly delays and legal bills, by not offering the same terms and conditions that are available in the Interconnection Agreements within Verizon Territory, and then by litigating many minute terms and conditions of an interconnection agreement.

Other telecommunications companies in Puerto Rico agree with this allegation. For example, STSJ Overseas Telephone Company, Inc. d/b/a Trescom Puerto Rico Division/Primus ("Primus") commented the following in In re: Request for Comments on Market Dominance by PRTC, Docket No. JRT-2000-CCG-0003:

> "**PRTC position as the dominant player has allowed it to delay interconnection of competitive carriers**. . . . As with other ILECs, PRTC is in a position to, and has used tactics to delay requests for interconnection from competitive carriers. Most interconnection agreements with PRTC have been executed only after lengthy negotiations and arbitration proceedings before the Board.[10] These tactics are commonly used by ILECs to retain their monopoly status and delay market entry by competitors."[11]

[10]"For example, KMC Telecom, Inc. and most recently, Sprint Communications Company, LP have engaged in protracted negotiations and arbitrations before the Board."

[11]See Exhibit 6, Comments of Primus, In re: Request for Comments on Market Dominance by PRTC, Docket No. JRT-2000-CCG-0003, at 6.

WorldNet understands that the Bell Atlantic/GTE Merger proceedings at the FCC had no input from Puerto Rico, even though GTE controls the operations of PRTC. Furthermore, the Bell Atlantic/GTE Merger Proceedings in Puerto Rico were undertaken without requesting comments from PRTC's competitors and without a hearing on the subject. Due to these serious procedural deficiencies, the final FCC Merger Order imposing conditions on Bell Atlantic and GTE (now Verizon) does not cover PRTC or Puerto Rico and the meager Bell Atlantic/GTE Merger conditions imposed by the Board are totally insufficient to guarantee an open and fair competition in Puerto Rico. For this reason, WorldNet believes that the Commission should extend the applicability of the merger conditions adopted in the FCC Merger Order to PRTC and Puerto Rico.

WorldNet believes that the fastest and most cost efficient way to achieve competition in the Puerto Rico Telecommunications market, open and expand CLEC and resellers competition in Puerto Rico, and to have truly competitive interconnection agreements, is for this Commission to extend the Bell Atlantic/GTE Merger FCC conditions to Puerto Rico and PRTC.

III. DISCUSSION

A. The Commission Should Extend the Applicability of the Pro-Competition Conditions Established in the FCC's Bell Atlantic/GTE Merger Order to PRTC and Puerto Rico.

1. Telecommunications Competition is still lagging in Puerto Rico even After the Federal and Puerto Rico Telecommunications Acts of 1996.

a. Few Facilities Based CLECs Competitors in Puerto Rico

After five years since the passing of the Federal and Puerto Rico Telecommunications Act, CLEC competition in Puerto Rico is still minimal. There are only three operating CLECs in Puerto Rico, Centennial Communications, Inc. ("Centennial"), International Telcom, LTD, and Telefonica Larga Distancia de P.R. Inc. ("TLD"). Out of these three, Centennial is the only major facilities based CLEC. Moreover, as mentioned before, companies that have signed and arbitrated interconnection agreements with PRTC have decided to either not start operations in Puerto Rico or to get out. Some examples of these are KMC, Sprint, Cellular One and RSV.

b. No Collocation on PRTC

As of today, and after five years since the passing of the Federal and Puerto Rico Telecommunications Act, there has been no collocation in PRTC's facilities by any of the CLECs in Puerto Rico.

c. No UNEs or UNE-P leased from PRTC

As of today, and after five years since the passing of the Federal and Puerto Rico Telecommunications Act, no telecommunications company in Puerto Rico has actually leased a UNE or UNE-P from PRTC.

d. Few Resellers

Currently, and after five years since the passing of the Federal and Puerto Rico Telecommunications Act, there are only three companies dedicated solely to do reselling in Puerto Rico, Island Communications Services, Ltd., Pan Am Wireless, Inc. and WorldNet. Nevertheless, if pursuant to the recent 8th Circuit decision, the resale margins are further lowered, the limited resellers market in Puerto Rico will diminish or disappear. Iowa Utilities Board v. FCC, 219 F. 3d 744 (8th Cir. 2000).

With respect to PRTC's dominance of the local market from a resale perspective, WorldNet's position is that PRTC currently has complete dominance of the market. WorldNet began the resale program with PRTC in July, 1999 as the first reseller. PRTC has established a resale program, but has yet to develop it to a point to make resale viable. This is discussed further in Section 5 below.

e. Competitive Situation in Puerto Rico

Five years after passage of the Communications Act of 1996, Puerto Rico is dead last among the major U.S. Cities in terms of telecommunication competition. Indeed, while local exchange competition has flourished on the mainland, it has languished on the island while PRTC continues to maintain a service monopoly throughout the island. While on the mainland, many have a choice of local telephone service providers, such options are practically unavailable in Puerto Rico.

Nowhere is this more evident than when competition on Puerto Rico is contrasted with a comparable mainland city such as Detroit, Michigan. With Detroit's approximate 1.2 million residences, the city and environs roughly parallel San Juan and Puerto Rico. The following figures compare the Detroit LATA 340 with Puerto Rico LATA 820, as of January 2000.

Registered competitive service providers with assigned prefixes.[12]

Detroit LATA	38
Puerto Rico LATA	14

Moreover, while the 38 service providers in Detroit represent a cross-section of wireless and wired service providers, those in Puerto Rico other than PRTC are mainly wireless. When we look at prefixes assigned, a common measure of competitive activity, there are 2083 active prefixes in Detroit with 1256 assigned to competitive carriers representing about 60 percent of the total.

In Puerto Rico, however, the numbers are more modest. Out of only 514 active prefixes, PRTC holds 247 assigned prefixes, Lambda Communications, Inc. (part of Centennial) holds 15 assigned prefixes, and the rest, 252, are assigned to wireless service providers (of which 77 belong

[12]See Exhibits No. 7 and 8.

to CTI, an affiliate of PRTC and subsidiary of TELPRI).[13] A major difference between the two locations is that Detroit has an excellent array of wireless and wireline competitors while Puerto Rico does not.

It's evident from these numbers that Puerto Rico needs to change their telecommunication strategy to promote more active competition with PRTC.

2. PRTC Has Control of the Puerto Rico Markets for Local Telephony, Access Services, and Intraisland Long Distance Service.

In 2000 Board opened a docket to determine whether PRTC was still retaining market control of local telephony, access to the network for intra-island long distance services and intra-island long distance service. The Board, after receiving comments from several of PRTC's competitors and PRTC itself, decided that PRTC in fact still held control of these markets.[14]

Moreover, some of the comments from PRTC's competitors in this docket provide information that is relevant and pertinent for the current Petition. All comments filed by PRTC's competitors in the Board's market control docket criticized PRTC's anti-competitive behavior and emphasized PRTC's control of the market. For this reason, WorldNet herein quotes some of these comments as additional evidence of the need to further regulate PRTC's activities in Puerto Rico[15].

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[13]See Exhibit No. 9.

[14]See Exhibits No. 10, Resolution and Order, In re: Request for Comments on PRTC's Market Control of Telecommunications Services (September 6, 2000); See Exhibit No. 11, Resolution and Order on Reconsideration, In re: Request for Comments on PRTC's Market Control of Telecommunications Services, (December 22, 2000).

[15]See Exhibits 6, 12, and 13, Comments filed by several PRTC competitors in the docket of In re: Request for Comments on Market Dominance by PRTC, Docket No. JRT-2000-CCG-003.

<u>Comments of STSJ Overseas Telephone Company, Inc. d/b/a Trescom Puerto Rico Division/Primus ("Primus"), In re: Request for Comments on Market Dominance by PRTC</u>, Docket No. JRT-2000-CCG-0003.[16]

> "**PRTC and its Parent Company are the Historically Dominant Players in their Respective Markets**. PRTC is the incumbent local exchange carrier and the virtual monopoly provider of local exchange services, access services and intraisland interexchange services in Puerto Rico. It is the only universally available carrier on the island, has the only island-wide ubiquitous network, and has the largest customer base, by far. Through its network PRTC offers local, intra-island long distance, wireless and Internet access services to the residential and business markets. As of December 1999, PRTC serves nearly 1.3 million access lines, more than 250,000 cellular subscribers and approximately 183,000 paging customers in Puerto Rico.[17] The market share of PRTC dwarfs the shares of competitors in the local exchange, access, and intra-island interexchange markets, both individually and collectively. ILECS, such as PRTC have certain inherent competitive advantages including: 1) ownership of the only ubiquitous network; 2) control of network elements necessary for competitors to provide services; 3) long-standing relationships with their customers; and 4) financial, technical and marketing resources substantially greater than their competitors."[18]

> "**PRTC is a virtual monopoly in the local exchange market**. . . . Since the enactment of the Puerto Rico Telecommunications Law of 1996, competition in the telecommunications market in the island is growing, but it is still far from thriving. Even though several companies have obtained certification to provide

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[16]See Exhibit 6.

[17]GTE Corporation Annual Report on Form 10-K405 for the period ended December 31, 1999, filed with the Securities and Exchange Commission ("SEC") at page 10.

[18]See Primus Comments, at 2-3.

facilities-based local exchange services, currently there is very little, if any, facilities-based competition for local exchange service in Puerto Rico. Aside from PRTC, Lambda Communications, Inc. ("Lambda") is the only facilities-based provider of local services in the island. Lambda has very limited facilities, which are in turn, limited to a small geographic area. Moreover, Lambda has targeted its telecommunications services to business rather than to the general public."[19]

"**PRTC controls an overwhelming majority of all Central Office Codes**. According to Lockheed Martin, the current administrator of the North American Numbering Plan ("NAMP"), PRTC controls most active central office codes, also known as NXX codes ("NXX Codes") in Puerto Rico. As of December 1999, of the 800 usable NXX Codes in Puerto Rico (including NXX Codes used for cellular and paging services) 339 are assigned to PRTC, 142 are currently unassigned, and 319 are presumed to be assigned to entities other than PRTC. This represents that PRTC currently has 51.5% of all NXXs in use and 42.4% of all available NXXs.[20] However, these numbers ofNXX assigned to entities other than PRTC are predominantly wireless and paging companies. More importantly to the Board's presently inquiry, Lambda has activated only 45 NXX Codes, which represent only 0.056% of all available NXXs in Puerto Rico. PRTC's control over the numbering resources in Puerto Rico is another clear example of the company's utter dominance over the telecommunications market in the island."[21]

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[19]Primus Comments, at 4.

[20]NAMP Central Office Code Assignments, NPA 787 (www. nampa.com/number_resource_info/co/codes.html).

[21]See Primus Comments, at 5.

Comments from Lambda Communications, Inc. ("Lambda") and Centennial Wireless PCS Operations Corp. (collectively referred to as "Centennial"), <u>In re: Request for Comments on Market Dominance by PRTC</u>, Docket No. JRT-2000-CCG-0003.[22]

> "Lambda is the major competitor of PRTC in the local exchange market. Other CLECs are slowly penetrating the market but clearly Lambda has the largest client base outside of PRTC. However, the size of Lambda's client base is not even 2% of the total lines available in the island. This clear, cold and unquestionable statement is enough to establish that PRTC still dominates the Puerto Rico telecommunications market. It would therefore make no sense as a practical or economic matter to declare PRTC to be anything other than the dominant carrier for regulatory purposes."[23]
>
> "Obviously, the Puerto Rico telecommunications marketplace is years away from having any carrier occupy a position similar to PRTC's, or to "substantially replace" PRTC, in any relevant market segment. . . . The removal of PRTC's label as the incumbent carrier departs from the premise that another CLEC has arisen in its market share and that both companies can compete in the marketplace. However, PRTC has continued to use its control of the PSTN to prevent competition from flourishing on the island.
>
> There are several examples of PRTC's delay in providing access to the network:
>
> Lambda and Centennial have established a new switch in Caguas. The companies requested SS7 circuits form Caparra and Bayamón's STPs to the Caguas switch on February 25, 1999. The circuits were delivered only last week, that is, more than 1 year after they were requested.

[22]See Exhibit No. 12.

[23]See Centennial Comments, at 1.

There have also been serious delays in requests for additional trunks to several meet-points so that the companies have sufficient trunks to support the slowly growing client base. Some of these circuits, only recently delivered, were requested in October 1999.

The activation of meet-points in major cities of the island, have also been plagued by delays from PRTC.

Access to unbundled network elements (UNEs) has been a slow process. Requests for UNEs date back to December 1999 and are at a standstill."[24]

Comments from Telefonica Larga Distancia de Puerto Rico, Inc. ("TLD"), <u>In re: Request for Comments on Market Dominance by PRTC</u>, Docket No. JRT-2000-CCG-0003.[25]

"It is on the issue of PRTC's ability to exclude or control entry into the intra-island long distance market that TLD concentrates its reply comments. As the Board is well aware, PRTC controls a critical bottleneck input, i.e., intra-island switched access service, relied upon by competitors to offer intra-island long distance service in Puerto Rico. PRTC's dual role as sole supplier of a critical input and retail competitor provides it wit the ability, in the absence of adequate price controls and imputation requirements, to disadvantage its competitors by charging itself less for the input than it charges its competitors.

One of the detrimental effects if PRTC charges itself less for intra-island access service than it charges its competitors is that PRTC can artificially reduce its own costs of providing intra-island long distance service relative to the costs it imposes on competitors. This pricing behavior would erect significant barriers to entry into the intra-island long distance market. Specifically, to match PRTC's below cost retail prices, potential competitors would have to incur

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[24]See Centennial Comments, at 3-4.

[25]See Exhibit No. 13.

significant operating losses, which would discourage entry into the intra-island long distance market. Further, actual competitors would also lack the ability to meet PRTC's prices without incurring significant operating losses, which could potentially drive them out of the intra-island long distance market. Actual and potential competitors' inability to compete with PRTC in the intra-island long distance market would be due, not to their relative inefficiency in providing service but, instead, solely to PRTC's ability to price its services below cost for a prolonged period of time. TLD notes that the Board agreed with its position in this matter in its recent Resolution and Order imposing an imputation requirement on PRTC's intra-island long distance rates."[26]

"Unfortunately, PRTC's ability to leverage its monopoly status in the intra-island exchange access market to control and adversely impact competition in the intra-island long distance market is retained regardless of the magnitude of PRTC's market share in the intra-island distance market. Absent appropriate pricing controls and imputation requirements, PRTC can regain lost market share by pricing its retail services below cost. The presence of alternative intra-island long distance service providers (whether facilities based or resale) places no meaningful restraint on PRTC's incentives or ability to engage in price squeezes. This is because such providers have no choice, for the foreseeable future, but to utilize PRTC's monopoly exchange access service to offer their intra-island long distance services. Further, pricing intra-island access services at forward looking economic cost does not alter PRTC's incentives to engage in predatory pricing to regain its market share in the intra-island long distance market."[27]

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[26]See TLD Comments, at 2.

[27]See TLD Comments, at 3.

3. Verizon, through GTE Holdings, Controls PRTC.

In 1999, GTE Holdings purchased 40% of the stocks of Telecomunicaciones de Puerto Rico, Inc. ("TELPRI"), which is the parent company of PRTC and CTI. GTE Holdings, on the other hand, is a wholly owned subsidiary of GTE International Telecommunications, Inc., which is a wholly owned subsidiary of GTE Corp.[28]

GTE Holdings, however, although it only purchased 40% of the stocks of TELPRI, acquired control of TELPRI and its subsidiaries. For this reason, GTE Holdings was required to petition the Board and the FCC for authorization for the transfer of control, licenses and certifications.[29]

The FCC PRTC-GTE Order states in part the following at ¶ 6:

> GTE Holdings, through its partial ownership of TELPRI, will own approximately 40 percent of PRTC and CTI, and PRTC will retain approximately 45 percent ownership of the companies. <u>GTE Holdings, however, will exercise control over the companies through several mechanisms</u>. Among other things, GTE Holdings will be entitled to elect five of nine TELPRI directors, thus giving it the ability to name the senior officers of TELPRI and its subsidiaries. Additionally, a shareholder agreement among GTE Holdings, Popular, and the local investors will give GTE Holdings certain powers, and GTE Holdings has entered into a management agreement with TELPRI and PRTC to take effect after the transaction is completed. [Emphasis ours].

As a matter of fact, after the purchase was approved, GTE Holdings named the current chief executive officer of TELPRI and PRTC as well as other executive officers within TELPRI and

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[28]See Exhibit No. 1, <u>Petition for Transfer of Control</u>, submitted by GTE and PRTC to the Board on September 16, 1998; FCC PRTC-GTE Order.

[29]See Exhibit No. 1, <u>Petition for Transfer of Control</u>; Exhibit No.2, Board's Resolution and Order of Feb. 22, 1999, Approving Transfer of Control to GTE Corp.; FCC PRTC-GTE Order.

PRTC.[30] Also, GTE Holdings has entered into a management agreement with TELPRI and PRTC in which it provides management services in exchange for several million dollars.

Moreover, GTE itself admitted to the FCC that it has *de jure* and *de facto* control of TELPRI, PRTC and CTI. In the FCC PRTC-GTE Order at ¶ 65, the FCC states the following: "GTE Holdings asserts that after the merger, . . . , GTE Holdings will continue to exercise *de jure* and *de facto* control over PRTC." In the FCC PRTC-GTE Order at ¶ 66:

> Furthermore, GTE Holdings contends that <u>at the end of the transaction it will clearly retain *de jure* and *de facto* control of PRTC</u>. Specifically, it will be entitled to elect a majority of TELPRI's directors and thus to name all of its senior officers, and it intends to name the chief executive officer of TELPRI. Additionally, GTE Holdings claims that a post-transaction shareholder agreement will give it added control over the governance and operations of PRTC. GTE holdings contends that the Commission has previously held that control or common ownership may exist even when an entity holds less than 50% of a carrier's stock, and that the touchstone of control is the ability to determine a company's policy and conduct of affairs. [Citing GTE Consolidated Opposition at 26-27.]

Finally, in the Petition for Merger Approval, at 3, submitted to the Board, Bell Atlantic and GTE state that:

> "GTE Holdings (Puerto Rico) LLC, has <u>indirect control</u> over a certified telecommunications company in Puerto Rico, Puerto Rico Telephone Company, Inc., a corporation organized under Puerto Rico law, which possesses the Certification to Provide Telecommunications Services No. JRT-CERT-0013." [Translation ours, Emphasis ours].

[30]See Exhibit No. 14, at 80-84 (PAGE 73-76 of document), Form S-4/A submitted by TELPRI to the SEC in Oct. 27, 1999.

In October 27, 1999, TELPRI submitted a Form S-4/A to the Securities Exchange Commission ("TELPRI Form S-4/A").[31] In this form, TELPRI states that "on March 2, 1999, the GTE Group acquired control of our company."[32]

As stated before, in 2000, Bell Atlantic and GTE made a corporate merger which resulted in a new company called Verizon Communications Corp. ("Verizon"), GTE remaining as a subsidiary. Bell Atlantic and GTE requested authorization for the corporate merger from the Board and from the FCC, both of which were granted.[33] Therefore, Verizon now has the ultimate control of TELPRI, PRTC and CTI. Verizon now considers and markets TELPRI and PRTC as its Puerto Rico operations and claims to have a controlling interest in them.[34]

As a matter of fact, the TELPRI Form S-4/A reports that TELPRI has to pay GTE about 38 million dollars a year in form of a management fee for five consecutive years, for managing the company. TELPRI informed the SEC the following:

> We will pay to subsidiaries of GTE, for five years after the acquisition, a combination of fixed management fee for services to be rendered by them in Puerto Rico and the mainland U.S. and a variable technology license royalty primarily for advice and direction regarding the administration and operation of our business. The aggregate amount of these fees and royalty will not exceed 8%, and

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[31]See Exhibit No. 14.

[32]Id. at 5 of Exhibit No. 14 (PAGE 4 of document). [Emphasis ours].

[33]See Exhibit No. 3, Petition for Authorization of Corporate Merger Between GTE Corp and Bell Atlantic Corp., presented to the Board on August 16, 1999; Exhibit No. 4, Board's Resolution and Order of January 31, 2000, approving merger and imposing certain conditions; and FCC Merger Order.

[34]See Exhibit No. 15, at 3.

will gradually decrease to 6%, of our earnings before deducting interest payments, taxes and depreciation allowance.[35]

TELPRI further states:

> "We are obligated to pay subsidiaries of GTE management fees and a technology license royalty aggregating 8% of EBITDA, or approximately $38 million based on pro forma 1998 EBITDA of $475.5 million prior to payment of the management fee." [Emphasis ours].[36]

TELPRI also informed the SEC of its close relationship with GTE. TELPRI stated the following:

> "We will utilize GTE Corporation's experience, resources and capabilities to improve our operating efficiency and profitability. For example, GTE Corporation has already begun to assist us in the procurement of products and services from key GTE Corporation vendors at prices more favorable than we could otherwise business processes such as order-entry, inventory management, service provisioning and customer care. Discussions are also underway to subcontract some key elements of these processes to GTE Supply, an established provider of logistics and supply-line services to the telecommunications industry.
>
> GTE Corporation will provide support for emerging technologies, advanced systems implementation, and marketing expertise. We plan to obtain network planning tools from GTE Corporation for both wireline and wireless systems and are also working with GTE Internetworking to develop and offer integrated data and Internet-related service to our larger business and municipal government customers. In addition, our relationship with GTE Corporation, one of the leading wireless telephony providers in the mainland United

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[35]See TELPRI Form S-4/A at 31 of Exhibit 14 (PAGE 29 of document).

[36]See TELPRI Form S-4/A at 51 of Exhibit 14 (PAGE 46 of document).

> States, will enable us to expand significantly our roaming capabilities in the mainland U.S. market."[37]

TELPRI provides more information about its management and technology license agreements with GTE in TELPRI Form S-4/A at 91-92 of Exhibit No. 14 (PAGE 84 of document).

Finally, even Verizon has admitted that PRTC is part of Verizon's local telephone operating companies. In a Declaration of George S. Dowell, Vice President for Strategic and Implementation of Verizon Advanced Data Inc., which is Verizon's separate data affiliate, Mr. Dowell declared that "the areas in which Verizon's local telephone operating companies provide local exchange service" include PRTC.[38]

4. **There is No Legal Reason for which PRTC and the GTE Operations in Puerto Rico were not Included in the BA/GTE Merger Order so that the Conditions were applicable to them.**

Puerto Rico is a territory of the United States, therefore, the Federal Telecommunications Act ("Act") and the FCC regulations fully apply to Puerto Rico. "United States" is defined in the Act to mean the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone. 47 U.S.C. § 153(g). The Act also defines a State as including the District of Columbia and the Territories and possessions. 47 U.S.C. § 153(v). The BA/GTE Merger Order, however, does not explicitly include the GTE operations in Puerto Rico. This is surprising considering the lack of LEC competition in Puerto Rico.

Whatever reasons exist for not including the Puerto Rico GTE operations in the BA/GTE Merger Order Conditions, there is no legal reason for the exclusion of PRTC and the GTE operations

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[37]See TELPRI Form S-4/A at 62 of Exhibit 14 (PAGE 57 of document).

[38]See Exhibit 16, Declaration of George S. Dowell, at ¶ 1, n.1, which forms part of Verizon Letter to the FCC dated January 26, 2001.